IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 30 OF 2005

IN

SUMMARY SUIT NO. 1983 OF 2003

TATA MOTORS LIMITED ... PLAINTIFFS

VERSUS

MALABAR AUTOMOBILES PVT.LTD. ... DEFENDANTS

Mr. Nitin Thakker a/w Gaurav Joshi, Vipul Bilose & Avinash Joshi i/b. Mulla & Mulla for the Plaintiffs.
Mr. Virag Tulzapurkar a/w Ms. Minakshi Iyer i/b. Doijode & Associates for the Defendants.

CORAM: S.U.KAMDAR,J.

DATE : 11th October,2005.

P.C.

1. The present suit is filed for recovery of a sum of Rs.64,90,728.28 comprising of the principal amount of Rs.43,31,265.90 and interest amount of Rs.21,59,462.38. The suit arises out of the goods sold and delivered. The Plaintiffs appointed the defendants as agent and vehicles are sold by the plaintiff to the defendant on principal to principal basis. Exhibits E-1 to E-10 are invoices and delivery challans in respect of the said goods sold and

delivered. The defendants have also executed bills of exchange. However, the present suit is not filed on bills of exchange, but filed on the basis of goods sold and delivered.

2. The defence of the defendants is that in para 5 of the plaint it has been mentioned tha the suit is filed both on invoices and delivery challans as well as bills of exchange and therefore the suit is bad as the bills of exchange not being properly stamped. The suit is not maintainable as a Summary Suit as the bills of exchange are inadmissible due to lack of stamp. I am of the opinion hat once the suit is filed on the basis of the goods sold and delivered and invoices and challans, that constitutes a separate contract and the suit is maintainable as a summary suit.

3. Insofar as the other defences are concerned, it has been contended that by signing the deliverychallans, the defendants have not accepted the terms and conditions thereof. In my opinion, the said defence is frivolous and is required to be rejected. However, the learned Counsel for the Defendants has lastly contended that there is no agreement to pay interest at 18% on the invoices and delivery challans. In that view of the matter, the claimfor interest is unjustified.

4. I am of the opinion that the Defednants can be granted leave to defend on condition that the Defendants to deposit in this Court a sum of Rs.40,00,000/- (Rupees forty lakhs only) within a period of four weeks, failing which the Plaintiffs will be entitled to decree. The amount if so deposited, the Prothoinotary & Senior Master is directed to deposit the same in a fixed deposit with any Nationalised Bank initially for a period of one year and renew the same from time to time till further orders from this Court. Even in default of deposit, the Plaintiffs will be entitled to decree for principal amount only upto the date of the suit.

5. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deiposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U.KAMDAR,J.)